Remarks

Claims 4-13 were pending in the application. Claims 4-13 were rejected. No claims were merely objected to and no claims were allowed. By the foregoing amendment, no claims are canceled, claim 4 is amended, and no claims are added. No new matter is presented.

Status

The Office action held the issue of correction in abeyance pending further information. It was queried whether 09735193 is the identical specification found in 09305457. That is correct. The later application includes no new matter and is, therefore, not a C-I-P. Accordingly, entry of the amendment and correction of the status is still requested.

Claims Rejections-35 U.S.C. 103

Claims 4-13 were "rejected under 35 U.S.C 103(a) as being unpatentable over Vonderhorst et al ('610), in view of the USDA application (Snak King-3/13/85), in view of applicant's admission of the prior art, further in view of Super Marketing (6/21/91), and Product Alert (7/20/92), further in view of Product Alert (6/9/97), Snack World (4/97), Confectioner Tobacconist Newsagent (CTN-2/15/91, p. 15), Snack World (10/88), Baking and Snack (2/94) and AC Nielsen (6/2/86)." Office action, page 2. Applicant respectfully traverses the rejection.

The Office action asserted that "Vonderhorst et al, as further evidenced by Snak King, teach that it was conventional in the art to provide a combination package, for retail sale, comprising a large package, a plurality of snack chips loosely contained in the large package and a dip containing package loosely contained in the large package along with the chip products." Office action, page 2. This assertion of "conventional[ity]" (as well as similar subsequent statements) is an overstatement. The cited art contains no evidence of conventionality. If anything, the limited nature of the art (e.g., an obscure USDA application, product announcement, etc. rather than a mass advertisement or an article identifying mass sales) indicates other than conventionality. Although such obscurity does not affect applicability as a reference under 35 U.S.C. 102, it may become relevant when considering the teaching of the prior art as a whole under 35 U.S.C. 103. Furthermore, even if significant in volume, the multiple references may be considered as evidencing failure of others to satisfy a long-felt need.

Similarly, the page 3 assertions of, *inter alia*, it being obvious to "substitute one

conventional food containing package structure for another..." is belied by the multiple references. The number of references failing to make the particular combination is evidence of its non-obviousness or possible teaching away.

The page 5 assertion that "conventional soufflé cups have been formed and sealed to produce a bandoliered effect, so that Vonderhorst et al could certainly package such products" is unsupported and irrelevant. Even if linked cups are known, there is no indication that the Vonderhorst et al. apparatus is usable therewith (see operation of roller 39 and conveyor 38), let alone a specific suggestion to actually use Vonderhorst et al. to produce the presently-claimed product.

Finally, it was asserted "it does not appear that claim 4 reads over snacks inside a bag inside another bag". Applicant disagrees. The prior amendments to claim 4 were clearly made using the language used by previous Office actions (e.g., "loosely") to identify that and with further distinguishing terminology (e.g., "along with"). One of ordinary skill in the art would clearly understand the meaning of these terms as indicating the lack of a separate bag/package. Nevertheless, the claim has been further amended with a negative limitation. This is not new matter or a new issue. For example, it is already inherent in claim 6. Furthermore, the prior amendments and arguments placed it at issue. If the examiner prefers any alternative wording, he is invited to propose it.

Accordingly, Applicant submits that claims 4-13 are in condition for allowance. Please charge any fees or deficiencies or credit any overpayment to our Deposit Account 02-0184.

Respectfully submitted,

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